

ARTICLE XI. - SICK AND SAFE LEAVE BENEFITS^[7]

Footnotes:

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Editor's note— Ord. No. 2019-10-03-0795, § 1, adopted Oct. 3, 2019, amended art. XI, and in so doing changed the title of said article which pertained to earned paid sick time.

Sec. 15-269. - Definitions.

In this article:

City means the City of San Antonio, Texas.

Department means the health department of the city also known as the San Antonio Metropolitan Health District.

Director means the director of the San Antonio Metropolitan Health District or their authorized designee.

Employee means an individual who performs work for pay within the City of San Antonio, Texas for an employer including work performed through the services of a temporary or employment agency. An employee who is typically based outside of the city (the employee works outside the geographical boundaries of the City of San Antonio for more than fifty (50) percent of work hours in a year) and performs work in the city on an occasional basis is covered by this article if the employee performs more than two hundred forty (240) hours of work in the city within a year. Employee does not mean an individual who is an independent contractor according to title 40, section 821.5 of the Texas Administrative Code (TAC).

Employer means any person, company, corporation, firm, partnership, labor organization, non-profit organization, or association that pays an employee to perform work for an employer and exercises control over the employee's wages hours and working conditions. The term does not include:

- (1) The United States;
- (2) A corporation wholly owned by the government of the United States;
- (3) The state or any state agency;
- (4) The City of San Antonio, Texas, or any other political subdivision of the state or other agency that cannot be legally regulated by city ordinance; or
- (5) Any person, company, corporation, or firm subject to, or with employees subject to the Railway Labor Act (45 U.S.C. 181 et seq.).

Family member means:

- (1) Any of the following as they relate to an employee:
 - a. Spouses, domestic partners, and both different-sex and same-sex significant others; or
 - b. Any other family member within the second degree of consanguinity or affinity; or
 - c. A member of the covered employee's household;
- (2) A minor's parents, regardless of the sex or gender of either parent.

The concept of parenthood is to be liberally construed without limitation as encompassing legal parents, foster parents, same-sex parent, step-parents, those serving *in loco parentis*, and other persons operating in caretaker roles.

Sick and safe leave means a period of paid leave from work accrued by an employee in accord with this article. Sick and safe leave is a fringe benefit as defined by the Texas Labor Code and not a wage or a component of salary.

Year means a regular and consecutive twelve (12) month period as determined by the employer.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-270. - Scope and intent of article.

To provide employees with the ability to accrue and use sick and safe leave when they need to be absent from work because the employee or the employee's family member suffer illness, injury, stalking, domestic abuse, sexual assault, or otherwise require medical or health care, including preventative care and mental health care. This ordinance does not require the payment of sick and safe leave upon separation from employment and it does not require that sick and safe leave be calculated as an increase to salary or wages for an employee. No provision of this article is designed or intended to conflict with or be preempted by the Federal Labor Standards Act (FLSA) (29 U.S.C. 201, et seq.) or the Texas Minimum Wage Act (TMWA) (Texas Lab. Code Section 62.001, et seq.).

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-271. - Duties and powers of the director.

- (a) The director is hereby authorized to carry out and enforce the provisions of this article, to educate employers and employees about this article, to render interpretations of this article, and to adopt policies and procedures in order to clarify and administer the application of this article's provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this article. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this article.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18)

Sec. 15-272. - Sick and safe leave requirements.

- (a) *General.* An employer shall provide an employee with sick and safe leave that meets the requirements of this article in an amount up to the employee's available sick and safe leave. The employer shall provide sick and safe leave at the rate of pay that the employee would have earned if the employee had worked the scheduled work time, exclusive of any overtime premium, tips, or commissions, but no less than the state minimum wage.
- (b) *Accrual requirements and yearly cap.*
 - (1) An employer shall grant an employee one (1) hour of sick and safe leave for every thirty (30) hours worked for the employer in the City of San Antonio sick and safe leave shall accrue in one (1) hour unit increments. There shall be no accrual of a fraction of an hour of sick and safe leave unless an employer chooses such smaller increment.
 - (2) Sick and safe leave shall accrue starting at the commencement of employment or the date this article is effective, whichever is later. However, consistent with Section 15-272(C)(1), use of sick and safe leave shall not be required until after an employee has met the established requirements for employment benefit eligibility, as applicable.
 - (3) This article does not require an employer to provide an employee with more sick and safe leave in a year than the baseline amount specified in this section. This article does not require an employer to allow an employee to accrue more than the baseline amount specified of sick and safe leave in a year. An employer may inform an employee that leave requested in excess

of the employee's available sick and safe leave will not be paid. The baseline amount for sick and safe leave for full time employees under this article is fifty-six (56) hours per employee per year unless the employer chooses a higher limit.

- (4) All available sick and safe leave up to the baseline amount provided in this section shall be carried over to the following year. Provided, that an employer that makes at least the baseline amount of sick and safe leave available to an employee at the beginning of the year under the purpose and usage requirements of this article is not required to carry over sick and safe leave for that year.
- (5) A written contract made pursuant to title 29, section 158(d) of the United States Code, or other state or federal law that provides for collective bargaining between an employer and a labor organization representing employees shall determine the benefits provided to employees and shall not be subject to this article.

(c) *Usage requirements.*

- (1) Sick and safe leave shall be available for an employee to use in accord with this article, provided, that an employer that has an established employment benefit eligibility period prior to the effective date of this article for all employees may restrict or limit an employee from using sick and safe leave during an employee's benefit eligibility period. An established eligibility period applying to the use of sick and safe leave may not exceed ninety (90) days from the start of employment. Employment benefit eligibility periods for the use of sick and safe leave are not applicable to, and do not supersede, any other timeline or eligibility requirement set out in state or federal law.
- (2) An employee may request sick and safe leave from an employer for an absence from the employee's scheduled work time caused by:
 - a. The employee's physical or mental illness or injury, preventative medical or health care or health condition; or
 - b. The employee's need to care for a family member's physical or mental illness, preventative medical or health care, injury or health condition; or
 - c. The employee's or their family member's need to seek medical attention, seek relocation, obtain services of a victim services organization or participate in legal or court ordered action related to an incident of victimization from domestic abuse, sexual assault, or stalking involving the employee or the employee's family member.
- (3) Verification of leave.
 - a. An employer may not adopt verification procedures that would require an employee to provide a detailed description of the domestic abuse, sexual assault, stalking, illness, injury, health condition or other health need when making a request for sick and safe leave under this section.
 - b. Consecutive days missed. An employer may adopt reasonable verification procedures consistent with section 15-272(c)(3)(c) to establish that an employee's request for more than three (3) consecutive days of sick and safe leave meets the requirements of this article.
 - c. Reasonable verification procedures for consecutive days missed:
 - 1. An employer cannot request leave verification documentation from an employee until the employee's fourth (4th) consecutive day of using sick and safe leave.
 - 2. An employee will choose what documentation to provide in responding to a request for verification. The department will make examples of verification available to employers and employees.
 - 3. Verification may include a written statement from the employee that the employee took either "sick" or "safe" leave provided by this article.

- d. Abuse of sick and safe leave. Employers suspecting abuse of sick and safe leave, including patterns of use, may request verification of the employee's need for leave, consistent with limitations and parameters established by state and federal law, or other source. Indications of patterns of use may include but are not limited to, repeated use of unscheduled sick and safe leave on or adjacent to weekends, holidays, vacation, pay day, on days when other leave has been denied, or when mandatory shifts are scheduled. An employer must abide by all existing federal and state laws regarding discrimination and employment practices.
 - e. An employer that determines that an employee has failed to comply with the verification requirements set out in 15-273(c)(3)(b), (c) or (d), may address that failure consistent with its established disciplinary processes and procedures.
 - f. Confidentiality and nondisclosure. If, in conjunction with this article, an employer possesses health or medical information regarding an employee or an employee's family member or information pertaining to domestic abuse, sexual assault, or stalking of an employee or an employee's family member, the employer must treat such information as confidential and not disclose the information except with permission of the employee, when ordered by a court or administrative agency, or when otherwise required by federal, state or local law.
- (4) An employer shall provide sick and safe leave for an employee's absence from the employee's scheduled work time if the employee has available sick and safe leave and makes a timely request for the use of sick and safe leave before their scheduled work time. An employer may not prevent an employee from using sick and safe leave for an unforeseen qualified absence that meets the requirements of this section.
 - (5) This section does not require any employer to allow an employee to use more than the baseline amount set forth within section 15-272(b)(3) of sick and safe leave in a year.
 - (6) An employee who is rehired by an employer within six (6) months following separation from employment from that employer may use any sick and safe leave available to the employee at the time of the separation. An employer is not required to pay out the balance of sick and safe leave to an employee upon separation from employment. However, if an employer chooses to pay out the balance of sick and safe leave to an employee upon separation from employment, the employer is not required to reinstate any sick and safe leave upon rehiring of the employee.
- (d) *Requiring employees to find a replacement to work scheduled time prohibited.* An employer shall not require an employee to find a replacement to cover the hours of sick and safe leave as a condition of using sick and safe leave. This article does not prohibit an employer from allowing an employee to voluntarily exchange hours or voluntarily trade shifts with another employee or prohibit an employer from establishing incentives for employees, to voluntarily exchange hours or voluntarily trade shifts.
 - (e) *Donating unused sick and safe leave.* This article does not prohibit an employer from permitting an employee to donate available sick and safe leave to another employee.
 - (f) *Employee transfer.* Neither the amount of sick and safe leave nor the right to use sick and safe leave shall be affected by an employee's transfer to a different facility, location, division or job position with the same employer.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-273. - No change to more generous leave policies.

- (a) An employer may provide paid leave benefits to its employees that exceed or otherwise meet the requirements of this article. This article does not require an employer who makes paid time off available to an employee in a manner consistent with this article to provide additional sick and safe leave to that employee. An employer that provides the following minimum requirements to employees will be considered to be compliant with this article:

- (1) The employer provides an amount of leave for employees that is consistent with what is set out in section 15-272 (b) as a baseline amount;
- (2) An employee may use provided leave for circumstances set out in this article.
- (b) This article does not require an employer to provide additional sick and safe leave to an employee if the employee has used paid time off that meets the requirements of this article for a purpose not specified in section 15-272.
- (c) This article does not prohibit an employer from granting sick and safe leave to an employee prior to accrual by the employee.
- (d) A covered employer with a leave policy that is otherwise compliant with the requirements of this article must still comply with and meet all other applicable requirements established by this article, including the prohibition of retaliating against employees that utilize sick and safe leave consistent with this article.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-274. - Notice, recordkeeping, and signage requirements.

- (a) *Monthly notice to employee.* On no less than a monthly basis, an employer shall provide, or make available for review, electronically or in writing to each employee a statement showing the amount of the employee's available sick and safe leave or the paid time off (PTO) balance that can be used in the same manner as sick and safe leave. This section does not create a new requirement for certified payroll.
- (b) *Notice in employee handbook.* An employer who provides an employee handbook to its employees must include a notice of an employee's rights and remedies under this article in that handbook.
- (c) *Recordkeeping.* For the period required for maintenance of records under title 29, section 516(a) of the Code of Federal Regulations, an employer shall maintain records establishing the amount of sick and safe leave accrued and used by each employee.
- (d) *Posting of signs.* If the director makes such signage publicly available on the department's website, an employer shall display a sign describing the requirements of this article in a conspicuous place or places where notices to employees are customarily posted. The director has the authority to prescribe the size, content, and posting location of signs required under this section. The signs displayed under this section shall be in English and other languages, as determined by the director.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-275. - Retaliation prohibited.

An employer may not transfer, demote, discharge, suspend, reduce hours or directly threaten these actions against an employee because that employee requests or uses sick and safe leave consistent with this article, reports or attempts to report a violation of this article, participates or attempts to participate in an investigation or proceeding under this article, or otherwise exercises any rights afforded by this article.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-276. - Investigation and withdrawal of complaints.

- (a) An employee may file a complaint with the department and the department may investigate complaints, including anonymous complaints alleging a violation of this article.

- (b) A complaint alleging a violation of this article must be filed with the department by or on behalf of an aggrieved employee within one (1) year from the date of the violation. A complaint will be deemed to be received by any member of city staff if provided in writing and shall be directed to the department by city staff. A submitted complaint should provide the following information:
- (1) Name of company or employer;
 - (2) Location of company or employer (including branch or office);
 - (3) Date of incident or violation;
 - (4) Explanation of incident or violation;
 - (5) List of witnesses or persons with knowledge of the incident or violation, as applicable.
- (c) An employer shall provide relevant information and testimony when requested by the department for the purposes of determining compliance with this article within fifteen (15) days of the department's request for information. An employer may request an additional ten (10) days to provide information as determined to be appropriate and upon approval of the director. Relevant information and testimony includes, and is limited to, only the information necessary to determine whether a violation of this article has occurred. This article does not provide the department with subpoena power.
- (d) Pre-investigation voluntary compliance. The department will provide written notice to a employer advising that a complaint has been filed alleging a violation of this chapter and will be investigated by the department. Upon receipt of a notice of complaint, the employer will have ten (10) business days to resolve the subject matter of the complaint by paying an employee for sick and safe leave that was taken and not paid for, provide an additional period of sick and safe leave to what was denied or taken without pay, and/or addressing and correcting an administrative violation. Additional voluntary compliance methods or options can be considered and approved by the director as appropriate to the resolution of a complaint.
- (e) The department shall only investigate matters related to this article and submitted complaints related to this article. The department may inform employees and relevant personnel at a worksite of an investigation of a complaint at that worksite alleging a violation of this article.
- (f) Withdrawal of complaints. An employee, at any time and at the employee's sole discretion, may withdraw their complaint. A complaint is withdrawn by the employee, and will be deemed to be received, when the employee notifies an employee or elected official of the City of San Antonio in writing. A complaint withdrawal will terminate the investigation process immediately, and will result in a finding of "withdrawn complaint" with respect to the outcome of the investigation. A finding of "withdrawn complaint" will result in no fine being assessed against the employer.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-277. - Enforcement.

The department has the authority to enforce the provisions of this article.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18)

Sec. 15-278. - Violation(s); civil penalties; voluntary compliance.

- (a) Civil penalty. Any employer who intentionally, knowingly, recklessly or negligently violates any provision of this chapter shall, consistent with the judicial procedure laid out in § 20-104 et seq., be fined an amount not more than five hundred dollars (\$500.00). Each day that a violation is committed or permitted to exist shall constitute a separate offense. Each violation of a particular section or subsection of this article constitutes a separate offense.

- (b) If it is determined after investigation of a timely complaint that a violation of this article has occurred an employer shall receive written notice of the violation and the civil penalty assessed, if any. Such written notice is presumed to have been received on the fifth day after the notice is mailed.
- (c) Post-investigation voluntary compliance. If the municipal court/administrative hearing officer finds after investigation of a timely complaint that a violation of this article has occurred, the department may seek voluntary compliance from the employer to remedy any violation of this article before submitting the violation for prosecution. Upon receipt of a notice of violation, the employer will have ten (10) business days to resolve the violation by paying an employee for sick and safe leave that was taken and not paid for, provide an equivalent period of sick and safe leave to what was denied or taken without pay, and/or addressing and correcting an administrative violation. Additional voluntary compliance methods or options can be considered and approved by the director as appropriate to the resolution of a violation. If voluntary compliance is not achieved within ten (10) business days following the employer's receipt of the written violation notice, the violation will be submitted for filing at Municipal Court.
- (d) For a violation of this article that occurs after the effective date of the ordinance from which this article derives but before April 1, 2020, the department may issue a notice to the employer that a civil penalty may be assessed for a violation that occurs on or after April 1, 2020. Provided, that a civil penalty for a violation of section 15-275 (retaliation prohibited) may be assessed anytime after the effective date of the enabling ordinance.
- (e) This section does not create a criminal offense.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-279. - Annual report.

The director shall publish an annual report regarding implementation and enforcement of this article including, without limitation, information about the number and nature of complaints reported, investigations undertaken, specific violations found, compliance achieved, and penalties assessed in the prior year, information about the industries and occupations with high rates of complaints and violations, and a discussion of this article's impact on employers and employees. This report may also include the director's recommendations for improvements to this article.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-280. - Severability.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph or section of this chapter shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this chapter, since the same would have been enacted by the city council without the incorporation in this chapter of any such unconstitutional phrase, clause, sentence, paragraph or section.

(Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Sec. 15-281. - Effective date.

This article shall become effective on December 1, 2019.

(Ord. No. [2018-08-16-0620](#), § 2, 8-16-18; Ord. No. [2019-10-03-0795](#), § 1, 10-3-19)

Editor's note— Ord. No. [2019-10-03-0795](#), § 1, adopted Oct. 3, 2019, added a new § 15-280 to the Code, and in so doing renumbered the former § 15-280 as § 15-281, as set out herein.